



Comptroller General
of the United States

Washington, D.C. 20548

144113

Decision

Matter of: Rhoads Construction Company, Inc.

File: B-242992

Date: June 11, 1991

Mark W. Baldwin for the protester.

Frederick Van Vurst for M.A. Mortenson Company, an interested party.

W.R. Ashworth, Department of Agriculture, for the agency.

Robert Spiegel, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

A procuring agency may accept a bid in an open envelope despite the solicitation requirement that bid envelopes be sealed, where the record shows that there was no prejudice to the interests of any other bidder.

DECISION

Rhoads Construction Company, Inc. protests the award of a contract for the construction of a National Seed Storage Laboratory at Fort Collins, Colorado, by the Department of Agriculture's Agricultural Research Service to either Alvarado Construction, Inc. or M.A. Mortenson Company, under invitation for bids (IFB) No. 8003-3K15-91. The protester argues that both the Alvarado and Mortenson bids were nonresponsive.


The protest is denied.

The solicitation was issued on December 21, 1990, with a closing date of February 5, 1991. Agriculture received five bids, including those of Alvarado, the low bidder at \$7,958,870, Mortenson, the second-low bidder at \$8,282,130, and Rhoads next at \$8,543,200. Since Alvarado was permitted to withdraw its bid due to a mistake claimed by the firm, we need not be concerned with the protester's argument that the bid was nonresponsive.

Rhoads argues that Mortenson's bid was nonresponsive due to the fact that it had arrived in an unsealed envelope, contrary to instructions which were contained in the solicitation.

Since the requirement that bid envelopes be sealed is for the purpose of maintaining and protecting the integrity of the competitive procurement process, a contracting officer generally may accept a bid or offer in an unsealed rather than a sealed envelope as provided by the solicitation where the circumstances surrounding the submission of the bid or offer demonstrate that the other competitors were not prejudiced. United Teleplex, B-237160.2, Feb. 2, 1990, 90-1 CPD ¶ 146; Ryan-Walsh Stevedoring Co., Inc., B-182039, Mar. 5, 1975, 75-1 CPD ¶ 129. Here, the record indicates that the bid was hand-delivered and received at the bid depository 4 minutes prior to the 1:30 p.m. bid opening and that it never was out of the possession of the government after it was delivered. Also, according to the agency, there is no evidence that any of the bid documents had been changed or otherwise tampered with. Since there is nothing in the record which shows that the acceptance of this unsealed bid would prejudice any other competitor, we conclude that the agency acted properly in accepting Mortenson's bid. Thus, we have no legal basis for questioning the propriety of the award to that firm.

The protest is denied.


for James F. Hinchman
General Counsel